

# ARKANSAS SUPREME COURT

No. CR 06-1369

NOT DESIGNATED FOR PUBLICATION

GARY HAYWOOD  
a/k/a Gary Leshawn Haywood  
Appellant

v.

STATE OF ARKANSAS  
Appellee

Opinion Delivered January 25, 2007

*PRO SE* MOTION FOR EXTENSION  
OF TIME TO FILE APPELLANT'S  
BRIEF [CIRCUIT COURT OF  
GARLAND COUNTY, CR 2001-5,  
HON. THOMAS LYNN WILLIAMS,  
JUDGE]

APPEAL DISMISSED; MOTION  
MOOT.

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## PER CURIAM

In 2001, Gary Haywood, also known as Gary Leshawn Haywood, entered a plea of guilty to attempted first-degree murder and first-degree murder. He was sentenced by a jury to an aggregate term of life imprisonment without parole in the Arkansas Department of Correction, and fined \$15,000 on the charge of attempted first-degree murder. We affirmed. *Haywood v. State*, CR 02-120 (Ark. Oct. 24, 2002). Subsequently, in 2006, appellant filed in the trial court a *pro se* petition for postconviction relief pursuant to Ark. R. Crim. P. 37.1. The trial court dismissed the petition without a hearing, and appellant, proceeding *pro se*, has lodged an appeal here from the order of dismissal.

Now before us is appellant's *pro se* motion for extension of time to file appellant's brief. We need not consider this motion as it is apparent that appellant could not prevail in this appeal if it were permitted to go forward because the petition was untimely. Accordingly, we dismiss the appeal and hold the motion moot. This court has consistently held that an appeal from an order that denied a

petition for postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *See Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (*per curiam*); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (*per curiam*).

Here, appellant appealed from his sentence. This court's mandate was issued on November 13, 2002, after affirmance of the sentence. Appellant filed the Rule 37.1 petition in the trial court on July 24, 2006. Pursuant to Ark. R. Crim. P. 37.2(c), if an appeal was taken, a petition under the rule must be filed in the circuit court within sixty days of the date the mandate was issued by the appellate court. Appellant filed his petition for Rule 37.1 relief almost four years after the date of the mandate, making appellant's petition untimely. Time limitations imposed in Criminal Procedure Rule 37.2(c) are jurisdictional in nature, and a circuit court cannot grant relief on an untimely petition. *Maxwell v. State*, 298 Ark. 329, 767 S.W.2d 303 (1989) (*per curiam*).

Appeal dismissed; motion moot.